

## **REMARKS/ARGUMENTS**

Claims 1 and 3-16 are pending in the application. Claims 1 and 3-16 have been amended and new claims 17-23 have been added. No new matter has been added. Reconsideration of the claims is respectfully requested.

### **Claim Rejections – 35 U.S.C. § 112**

In paragraph 2 on page 2 of the Office Action, claims 5 and 12 are rejected under 35 U.S.C. § 112 second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. The Applicants respectfully traverse this rejection, but have amended the application to overcome the objections. Claims 5 and 12 have been amended. It is believed that all claims comply with 35 U.S.C. § 112. With respect to claim 5, there are many known means for differentiating between voice and non-voice signals. Normally the non-voice signals are suppressed, such as in noise cancelling system, but in a dual earpiece system, it may be desirable for a user to hear ambient sounds in one ear and only voice in another.

### **Claim Rejections – 35 U.S.C. § 102**

In paragraph 2 on page 3 of the Office Action, claim 1 is rejected under 35 U.S.C. §102 (b) as being anticipated by Acree (US Patent No. 5099514).

To anticipate a claim, the reference must teach every element of the claim. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Therefore, all claim elements, and their limitations, must be found in the prior art reference to maintain

a rejection based on 35 U.S.C. §102. The claims as amended are not encompassed by the prior art of record.

### **Claim Rejections – 35 U.S.C. § 103**

In paragraph 4 on page 4 of the Office Action, claims 7-11 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Acree (US Patent No. 5099514) as applied to Claim 1.

In paragraph 5 on page 5 of the Office Action, claims 14-16 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Acree (US Patent No. 5099514) as applied to Claim 1 and further in view of Koyama et al. (US Patent No. 5581621).

Claim 1 recites a system including a plurality of user selectable predetermined transfer characteristics. The cited reference, Acree, has not provision for the user to select different preset transfer characteristics. Furthermore, there is no practical modification of Acree which would permit this. The equalizer in Acree is located in a box, not between the headset and amplifier and thus cannot be easily user selectable.

Claim 3 recites a structure not in any way eluded to in the cited art. This configuration is particularly beneficial where the user may need to be alerted to emergency communications or signals. One earpiece carries normal audio traffic while the second one is reserved for such emergency signals. The wearer can received an emergency signal in the second earpiece and the focus attention on that earpiece as needed. If the prior art system was employed, the signals would be comingled into both earpieces and might be missed by the user.

Claim 4 provides for a prioritization circuit which passes the signal of highest priority to the earpiece (s). The advantage is significant. If a higher priority signal is received, the user is immediately notified and other signals are squelched.

Claim 5 provides a system which distinguishes voice type signals from non-voice and passes them to separate earpieces. This advantage of this configuration is that the wearer can, for example, hear ambient sounds in one earpiece and transmitted signals

in the other without comingling. If the user wants to focus on one or the other, he/she, can turn off or push the other earpiece of the ear.

Claim 6 further defines the concept of Claim 5 by addition prioritization.

Claim 7 further defines prioritization with emergency signals.

Claim 8 adds using a transfer characteristic adapted for emergency signals.

Claims 9 - 16 are directed to specific features of the device of claim 1.

Claim 17 is directed to the concept of having different feeds of different information (content) transferred to each earpiece. The Acree reference transmits the same information (content) to each earpiece, but potential with different transfer characteristics. This is not the same nor an obvious variation.

Claim 18, is directed to the use of this concept to receive multilingual transmissions simultaneously which would allow the user to learn a second language by having the translation immediately available in the other ear.

Claim 19 affords the user to learn different dialects of the same language by hearing them simultaneously to learn to recognize the differences.

Claim 20 provides for one earpiece to receive ambient information while the other receives other (usually distant) information.

Claim 21 is an application where a computer game (or equivalent) player would be able to receive messaging from a co-team member.

Claim 22 would allow for the player to further receive information from a competitor but be notified by a tone or equivalent that it is a message from a competitor (the user might not recognize the voice or non voice signal).

Claim 23 provides a prioritization system to insure that higher priority messages are passed over lower priority messages.

It is submitted that the claims as now amended are not rendered obvious by the cited art.

## **CONCLUSIONS**

In view of the amendments and reasons provided above, it is believed that all pending claims are in condition for allowance. Applicant respectfully requests favorable reconsideration and early allowance of all pending claims.

If a telephone conference would be helpful in resolving any issues concerning this communication, please contact Applicant's attorney of record, Michael B. Lasky at (612) 436-3152.

Respectfully submitted,

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